

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 GABRIEL HERNANDEZ, No. C 06-6977 SI (pr)

9 || Plaintiff,

ORDER OF PARTIAL DISMISSAL AND FOR AMENDMENT

10 || v.

11 SANTA CLARA COUNTY
SHERIFF'S DEPT.; et al.,

Defendants.

15 Gabriel Hernandez's complaint alleged that he had been subjected to physical assaults,
16 verbal harassment, and placement in a single cell for two weeks at the Santa Clara County Jail.
17 On April 2, 2007, the court found that the complaint did not state a claim for relief, except as to
18 a due process claim for Hernandez's two-week placement in a single cell. The court ordered
19 Hernandez to file an amended complaint to correct several deficiencies in the complaint.
20 Hernandez did not file an amended complaint and the deadline by which to do so has passed.
21 Therefore, all claims except the due process claim are dismissed without leave to further amend.

22 One of the problems the court identified in the complaint was the absence of information
23 as to whether Hernandez was a convict or pretrial detainee at the time of the events alleged in
24 the complaint. The absence of information about whether he was a convict or pretrial detainee
25 actually affects whether there is a cognizable due process claim and therefore requires the court
26 to revisit its earlier determination that a due process claim had been adequately alleged. In the
27 original order of dismissal, the court wrote: "Hernandez states that he was put in a single cell for
28 15 days as punishment. Liberally construed, that claim is cognizable as a due process violation.

1 See Bell v. Wolfish, 441 U.S. 520, 535-37 (1979)." Order Of Dismissal With Leave To Amend,
2 p. 5. In making that statement, the court had assumed that Hernandez was a pretrial detainee,
3 but it now appears that the assumption should not have been made because the pretrial detainee
4 vs. convict distinction makes a big difference for this particular claim. Bell only applies if
5 Hernandez was a pretrial detainee when he was put in the single cell, as Bell severely limits
6 punishment of pretrial detainees. If, on the other hand, Hernandez was a convict at the relevant
7 time, the applicable standard is the much stricter standard in Sandin v. Conner, 515 U.S. 472,
8 484 (1995), which requires that the challenged decision cause a deprivation of "real substance,"
9 which here would mean the imposition of an "atypical and significant hardship on the inmate in
10 relation to the ordinary incidents of prison life," *id.* at 484. Fifteen days in a single cell or
11 solitary confinement would not amount to an atypical and significant hardship on a convict.
12 See Sandin, 515 U.S. at 485-86 (30-day disciplinary segregation was not an atypical and
13 significant hardship); Mujahid v. Meyer, 59 F.3d 931, 932 (9th Cir. 1995) (under Sandin no
14 liberty interest when inmate placed in disciplinary segregation for 14 days). The importance of
15 this is that whether a due process claim for relief has been stated depends on whether Hernandez
16 was a pretrial detainees or a convict at the time he was put in the single cell. Hernandez must
17 amend to provide this information.

18 No later than **January 11, 2008**, Hernandez must file an amendment to the complaint to
19 identify whether he was a pretrial detainee or convict on December 11, 2005, when he was
20 placed in the single cell. The amendment need not be a long document; in fact, it would suffice
21 if it was just a single page labelled "Amendment to Complaint" with the case name and number
22 on it, and on which Hernandez states "I was a _____ on December 11, 2005," inserting "pretrial
23 detainee" or "convict" on the blank line. If he does not file the amendment by the deadline, this
24 action will be dismissed.

25 IT IS SO ORDERED.

26 Dated: December 17, 2007


SUSAN ILLSTON
United States District Judge